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Banking Services Quality Assurance Management with regard to Small – Medium Enterprises (SMEs) in emerging and developing markets

By

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PROFILE

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His research interests lie in the field of maritime and construction law, with a particular emphasis on international dispute resolution. He is the author of a series of texts on Arbitration, Dispute Resolution, Constitutional Law, International Trade and Finance Law, Construction Law, Carriage of Goods By Sea, Marine Insurance and Admiralty Law published by the NMA Press in addition to articles in leading journals such as the ABA. He is a panel reviewer for the CIOB Journal and the Construction Law Journal and editorial panel member and contributor to ADR News.

He is an adjudicator, arbitrator, dispute review board panellist/chairman and mediator with experience in the US. He is Company Secretary to, and a fellow director of, the Nationwide Academy for Dispute Resolution UK Ltd .

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Banking Services Quality Assurance Management with regard to Small – Medium Enterprises (SME) in emerging and developing markets

AIM : The aim of this paper is to examine the concept of squaring the circle in service quality assurance mechanisms through the adoption of internal conflict / dispute avoidance, dispute management and external independent dispute settlement processes, placing the emphasis on taken account of the views of the disaffected client.

OBJECTIVE : The objective is to ensure that lessons are first learnt and then followed up by the development of and implementation of policies to address shortcomings exposed by the dispute management and settlement processes.

Introduction

In the service sector commercial enterprises are never slow to extol the superior quality of the services that they offer. Consumer satisfaction, we are given to believe, is guaranteed. Clients are treated with respect. Clients are valued. Service is both prompt and effective. The service provider can be counted on to cater for our every need and above all when our chips are down they will not turn molehills into mountains. We can count on them to put Humpty-Dumpty together again without any fuss.

The reality, after we have parted with our hard earned cash, and are looking for a return on our good faith investment but have no more to offer the provider is not always so wonderful. We lawyers are often called upon to pick up the pieces. Hence, the opening part of a recent judgement from the Technology Court.

Tonkin v UK Insurance Ltd No1 [2006] EWHC 1120 (TCC)

"On 29 September 2002, a major fire destroyed the Claimants' home, Curls Barn, in the village of Ripe in Sussex. Almost all the property was destroyed in the fire. The Claimants had insured both the building and its contents with the Defendant. With their three children, they moved into a small separate building adjacent to the ruins of the property, known as The Gallery, and waited for the property to be rebuilt. Extraordinarily, 3½ years on, that has yet to happen. One of the principal issues in this case is how it has come about that, to paraphrase an old insurance slogan, a drama has been turned into such a significant crisis."

per His Honour Judge Peter Coulson QC, 18th May 2006

It might come as no surprise to learn that Mr Tonkin had fallen out of love with the professions that he had placed so much faith in, ranging from his bankers, his insurers and the building professionals, who had not yet reassembled his family home.

Mr Tonkin did not fare well in court either. He was partly the author of his own woes, but the professionals were not without fault. Much harm to all concerned **could** and **should** have been avoided but the problems were badly managed by all concerned, exacerbating rather than ameliorating the situation. It is submitted that what was need was an effective dispute management process, for both service provider and client.

Background to the development of Dispute Management Processes

The *"soit disant"* graceful, demure, subservient nature of Victorian commerce at the turn of the 19th/20th century, which crowned the consumer as king has failed to survive the cut and thrust of the evolving mass market of self service consumerism.

There has been a revolution in the way that the business sector operates. In no area has this been more evident than in the banking sector. The Monday to Friday 10:00 am to mid-day and 2:00 pm – 3:30 pm trading day of the traditional bank of my youth has given way to 6 day trading, 24/7 ATMs and open-access internet banking. Banking represents a small part of the services offered by the high street bank, which now embraces property surveying & conveying, financial & legal advice, insurance and mortgage facilities as well as international factoring and currency exchange.

The revolution however has brought with it great changes in attitude, not all for the good. The Victorian axiom that ***"The Client is Always Right"*** had by the 1970'ies, given way to an over bearing attitude by major goods and service providers with a stranglehold on the market, which regarded the client as a barely tolerated necessity. The hall-mark of business became the disinterested, surly shop assistant and secretarial staff who could barely force themselves to answer client queries. Returning and replacing defective goods and receiving compensation for poor service was often an uphill struggle. Clients became extremely disaffected and gradually, the worm turned.

Consumer legislation in the UK in the 1980'ies did much to empower the consumer, resulting in expensive, time-consuming litigation which by enlarge supported the consumer, but by the same token damaged the image of many traditional businesses, which have been forced by the market to adapt to a newer more competitive environment or fade away.

Enhanced communication and delivery services have ensured that the consumer in the UK is able to call, easily and conveniently, upon a wide range of alternative sources of both goods and services. This is evident in the banking sector. Gone are the days when wages were paid in cash, on a Friday evening in little brown envelopes, to be promptly gathered in by *"she who must be obeyed"* and doled out grudgingly from the household budget as pocket money. Then, only a minority had bank accounts. Today salaries are banked directly, as are government benefits. Females have embraced paid employment. Both sexes control the disposition of personal income. So, everyone in the UK needs a bank account to operate effectively and efficiently. Cash has largely given way to plastic. Banking is no longer a daunting mystery for the British public and bank managers are no longer treated with awe and respect. One consequence of this familiarity is that traditional brand loyalty can no longer be relied upon. In order to retain clients. Thus "***quality of service & product***" have once more become paramount.

The upshot of this is that goods suppliers and service providers can no longer afford to be complacent about :-

i) client satisfaction with the pre-existing quality of goods and/or services and
ii) the way that complaints are dealt with.

The combined effect of these factors is forcing commerce to re-evaluate the consumer / supplier interface and the ways that management conduct their affairs.

Accordingly, in the West, the last decade of the 20th century witnessed a "Management Revolution" in commercial practice involving the development of new "Dispute Avoidance," "Conflict Management" and "Dispute Settlement Processes," centred around :-

a) the enhancement of service provider / client communications,
b) improvements in consumer relations techniques and
c) the development and implementation of alternative mechanisms for dispute resolution, popularly known as ADR (Alternative Dispute Resolution).

The generic term for this development is :-

"The Dispute Management Revolution"

What Is Dispute Management ?

Dispute Management embraces good practices and techniques

1 for the avoidance of disputes
2 for the minimising of disputes
3 for the settlement of disputes

The concept of Managing Disputes arose from the realisation that whilst disagreements & differences of opinion are part & parcel of the day to day interactions between members of our modern sophisticated society, it is not inevitable that disagreements & differences of opinion should lead to dispute. Through co-operation potential problems can be addressed at an early stage thereby preventing disputes from developing.

Furthermore, even where an issue rapidly develops into a confrontation, it is not necessarily too late to do something about it. If the parties **acknowledge** the existence of a problem at an early stage and **co-operate** together to address the problem before either party has suffered any significant adverse consequences, the problem will often cease to be a major divisive issue.

Traditionally, businessmen have given little thought to the settlement of disputes when, full of enthusiasm for a project, commercial relationships were formed. In consequence, if things subsequently went wrong, the parties had to go to court to get a judge to decide the rights and wrongs of the situation.

From early times, the maritime & construction industries have preferred to settle disputes through arbitration, which tended to be quicker & cheaper than going to court. Arbitration has the advantage also of being private, keeping disputes out of the public domain. The fact that many arbitrators had industry knowledge also helped to ensure that the arbitrator's decision took industry customs and practices into account and reduced the need to call expert witnesses to explain complex industry related issues.

However, arbitration made little impact on commerce in general. In recent times a wide range of ADR / Settlement mechanisms have developed to provide cheap, fast, effective ways of settling disputes, either by agreement between the parties, ranging from conciliation and mediation to fast track arbitration and adjudication.

To varying extents these mechanisms require a degree of co-operation in discussions or in procedure. By providing in contracts for these mechanisms and by participating in them, the parties continue to manage their dispute, rather than hand it over to a formal judicial dispute settlement process, over which they have little or no influence.

Dispute Avoidance

A **Communications Systems**. Prevention is better than cure. Direct contact with clients when potential problems appear can lead to instant remedial action. A phone call is better than a mailed "*shot over the bows*". Many disputes result from a failure to look beyond personal aims, interests & objectives to consider

a) the effect of one's actions on others or
b) to make a realistic assessment of what others can legitimately expect to receive from you in return for their co-operation & support.

The central problem is poor interaction between individuals & organisations which can be addressed by establishing effective channels for communication *(not mere small type in contracts)* that require both parties to set out, & regularly update

i) what they want out of a relationship
ii) what they are prepared to contribute to the relationship, and
iii) ensure that both parties actually listen and take on board the concerns & interests of the other party.

Commercial relationships usually achieve the first (i) & second (ii) of these, namely what each party wants out of the relationship and what they are prepared to contribute, at least at the outset, since the starting point for relations is likely to be a contract or agreement. This was normally sufficient to ensure that simple, straight-forward projects would proceed smoothly, though, where the agreement is not committed to writing a minimum requirement should be that the parties recapitulate & run through a check list at the end of negotiations, to confirm that both parties fully understand what they have committed themselves to. Complex on-going relations require more.

The advent of long term, complex commercial relations (*e.g. agency, insurance & service contracts*) has forced commerce to develop updating mechanisms to deal with extended timelines on projects that evolve and where requirements continually change These include :-

1) **Follow Through Supplier/Client Communications Pro-forma**. At a basic level problems related to ongoing relations can be addressed by the introduction of regular paper-work exercises designed to keep a project on track and ensure that all involved in the project are aware of changes to the original project design. It is far better to be pro-active, initiating check-lists and updating communications than to be reactive. The key to such systems is to monitor only critical information with built in response mechanisms whilst avoiding excess bureaucracy.

   Client satisfaction monitoring systems also provide valuable insights into the quality of service and enable the provider to adapt business practices and relations to ensure that the business responds to the changing needs of the market place.

   The danger here however is that such surveys often elicit *"appropriate"* responses both by the nature of the questions asked and through the careful selection of the target audience, particularly where the objective is to provide material for advertising rather than as part of a pro-active problem identification and solving program. Accordingly, disaffected clients are frequently ignored.

2) **Co-operative Management Systems.** At a more sophisticated level where a high level of co-operation in the delivery of a project is required good relations and high quality communication can be assured by the introduction of Project Team Management Systems, which should include consultation with financial backers.

   The traditional management model often results in two or more separate teams working simultaneously but in isolation on the same project. Team or Project Management involves the establishment of temporary management teams to oversee the execution of a project. The concept operates on the notion that *"too many cooks spoil the broth"*. The setting up of a steering group for the project, with members from each of the organisations involved, who can protect the interests of their organisation ensures that the team, operating from a common data base, provides the same information & instructions to all of the organisations, avoiding misunderstandings & confusion, reducing the scope for dispute.

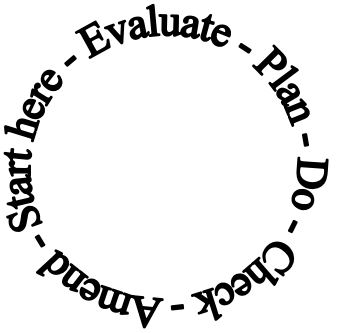
3) **Acknowledgement Mechanisms.** The third element (iii) regarding listening and taking concerns on-board are addressed by introducing acknowledgement systems that require the other party to not only confirm receipt of new information but also to provide a statement about intended/proposed action to address the new situation.

B **Quality Management Mechanisms.** Poor quality services and a failure to deliver what the client (i.e. the customer in the quality chain) requires, or to deliver what the customer is entitled to *(or at least what he believes he is entitled to)* under the bargain, lie at the root of many disputes.

It is far too simplistic simply to assert that the solution is to deliver quality each and every time by implementing quality inspection systems. Quality inspection systems "pick up" failures that have occurred after the product or service has been completed, used or the service provided. Such systems identify failures. They do not however, put in place mechanisms to *"get it right next time."*

Total Quality or Total Quality Management Systems are systems of quality management designed to reduce future variability in output and conformance to specification whether it is a product or a service.

Quality improvement is a never-ending "spiral helix" that begins with the **initial evaluation** of the product or the service.



The concept of the ***"Evaluate – Plan – Do – Check – Amend"*** (EPDCA) cycle is a never ending quest for improvement reducing variation in product to a minimum.

The adoption of Total Quality Management Systems requires for most organisations a fundamental change in philosophy compared to the tried and trusted quality assurance systems of identifying failures produced by the system rather than identifying failures in the system. In the modern business world, it has long been recognised that :-

i) Familiarity tends to lead to lower service standards, which need to be regularly monitored.
ii) The standards expected by clients are continually rising, requiring re-evaluation of the quality of service.
iii) Competitive pricing can have an adverse impact on quality of service delivery. In order to maintain quality it is necessary to invest on a regular basis in order to embrace time saving modern facilities & business practices.
iv) The concept of "best value" produces more discerning service clients who value quality of service over the lowest market price.

A complete quality management system based on concepts of "Total Quality" has the potential for most organisations, whether producing a product or providing a service, to provide a better product more efficiently. The question is whether an organisation or an individual is prepared to adopt methods that can be considered radical by some, but standard procedure by others.

The question that should be asked is

"Are you prepared to learn from your mistakes and if so how ?"

If the answer is yes then you should consider implementing

"A Total Quality System of Management."

Minimising Disputes

It is not always possible, even with the best co-operation in the world, to prevent a dispute arising. Miscommunications can never be completely avoided. Unforeseen circumstances can result in accidents, which no degree of planning can prevent. Unexpected changes in the market can alter the viability of projects. Minimising resultant disputes is an exercise in damage limitation. Such measures are often referred to as ensuring a **"drama does not turn into a crisis"** or **"preventing molehills turning into insurmountable mountains."**

Co-operative Management Systems

Project Team Management Systems also provide a mechanism for the resolution of minor disputes as well as for the identification of potential problems, which if left un-addressed would inevitably lead to disputes. Providing there are built in contractual mechanisms for the adjustment of costs, to cover minor expenditure where the responsible person is easily identifiable, or even to share the cost of adjustments, where no particular person or organisation is clearly responsible for the problem, then a dispute can be quickly settled by the in house project management team.

Dispute Management Systems.

It is becoming increasingly common for a Dispute Management Board (DMB) to be attached to a Project Management Team. The DMB is an Independent Advisory Board which observes the early proceedings of the Project Management Team and subsequently pays regular updating visits during the life of the project, with a view to identifying potential problems. Those closely attached to a project on a daily basis often fail to see tell tale signs of pending problems whereas the problems are often obvious to the disinterested outside observer.

The DMB will comprise a number of different specialists or experts and one or more members of the DMB can often adopt the role of a conciliator, advising the Project Team on the best way to address problems identified by the DMB. Alternatively the DMB

may adopt the role of a mediator, facilitating discussions between members of the Project Team aimed at producing a dispute settlement agreement.

Experience indicates that the number of disputes avoided or settled amicably at an early stage significantly reduces the on-going legal costs of large-scale projects but they can apply to small players as well. DMB have been developed for both telecoms and banking services and successfully implemented in the Middle East.

Dispute Settlement (ADR).

Co-operative Dispute Settlement.

There are two principal forms of negotiated dispute settlement, namely conciliation and mediation. These are not terms of art and are sometimes used interchangeably. However, it is convenient to ascribe certain discernible features to each of them in order to be able distinguish between different mechanisms. The common feature is that a third party acts as a facilitator for negotiations enabling the parties to explore potential ways of settling the dispute without running immediately into confrontation before the advantages and disadvantages of the initiatives have been considered and weighed up by the parties. The facilitator will provide both parties with an opportunity to set out their view-point regarding the causes of the dispute and what they want out of, or are prepared to give to, the settlement process. The facilitator will then explore the issues further with each of the parties in turn ensuring that they both take into account the views of the other, until hopefully, a settlement can be brokered. The process concludes with an agreement, which is normally reduced to writing and signed by the parties.

Conciliation. The distinguishing features are

a) The conciliator takes an active role in formulating the outcome.
b) Most sessions are conducted with everybody present, though private sessions with each party in turn are possible.
c) Representation, particularly by a lawyer is possible but not common.
d) The resulting agreement is normally binding in honour only and thus not enforceable by the courts but is likely to be made public. Non-compliance is rare but not unknown.
e) The process may be short but tends to last for several days or even weeks.

Mediation. The distinguishing features are

a) The mediator may explore and even suggest ways of settling the dispute but will rarely formulate or pressure either party to accept a particular solution.
b) Private sessions or caucuses are used for private discussions with each of the parties in turn where avenues for settlement can be explored without prejudice. Only that information which is sanctioned by the party can be passed to the other side by the mediator.

c) It is usual for the parties to be represented, often by a lawyer. Mediators do not provide the parties with advice.
d) The resulting agreement is normally legally binding and thus enforceable by the court. Neither the terms of the agreement, nor the fact that a settlement has been reached is unlikely to be made public. Compliance is the norm.
e) The process may take several days or weeks but one day is the norm.

Third Party Dispute (Determination) Settlement.

Arbitration is the best known form of private third party determination of disputes. However, there are in fact a wide range of processes where a third party is required to act as a private judge, to make a ruling as to which of the parties is in the right and which is in the wrong, and to decide how much, if any, compensation is payable. Traditionally the loser pays the costs of the process. The arbitration may be stated to be final without any avenue for appeal, though judicial review of the process by the courts is always possible. Arbitral awards are easily enforceable both by domestic courts and international awards are enforceable by foreign courts as well.

Arbitration is best described as a private court. The private nature of arbitration is favoured by commerce. Ideally, arbitration should be quicker and cheaper than the courts. Procedures may mirror the courts but tend to be more relaxed and less formal.

Fast Track Arbitration differs from traditional arbitration in that the time for commencing the process is strictly controlled, usually within 28 days from submission and the parties agree in advance to short time limits for the arbitral hearing. Costs are often fixed in advance but in any event are kept to a minimum.

Paper Only Arbitration is ideal for small disputes. All the claims, defences and evidence are submitted in written form. There is no hearing. The process can be very quick and is inexpensive.

Adjudication differs from arbitration in that the decision is temporary, pending final determination either by arbitration or through the courts. The process usually takes 28 days only. If no further challenge is made the dispute is brought to an end. However, even if one of the parties chooses to take the matter further the losing party must comply with the decision pending a subsequent hearing. Adjudication is very effective at ensuring that tradesmen and sub-contractors receive prompt payment. Subsequent hearings are rare. Adjudication is inexpensive.

Expert Determination is a valuable, though less frequently used form of dispute resolution used to settle disputed facts where questions of law are not in dispute. The process is most commonly used to settle technical disputes in engineering. However, it is also used to fix the contract price for the sale of real estate, art and antiquities where the expert is known as a valuer. The process is speedy, inexpensive and legally binding.

Dispute Review Boards (DRB) are an extension of the Dispute Management Board (DMS) outlined above, embracing the role played by members of the DMS as conciliators and mediators but also extending it to interim or final third party determination of disputes as either adjudicators or arbitrators. Since the members of the DRB are already familiar with all the surrounding facts and the background to the dispute, there is little need to call witnesses and an adjudicatory or arbitral panel can quickly be convened at very little additional cost. Hearings tend to be brief and the parties get a decision very quickly. The process is private so disputes are kept out of the public domain.

Experience indicates that satisfaction levels with DRB's are high and the process is cost effective compared to normal arbitration and judicial settlement of disputes.

DISPUTE MANAGEMENT SUMMARY

DISPUTE AVOIDANCE	MINIMISING DISPUTES	DISPUTE SETTLEMENT
Communications Systems	**Co-operative Management Systems**	**Co-operative Dispute Settlement**
Pro-forma	Project Team Management Systems	Conciliation
Co-operative Management Systems		Mediation
Acknowledgement Mechanisms		
Quality Assurance Mechanisms	**Dispute Management Systems**	**Third Party Determination**
Monitoring	Dispute Management Boards (DMB)	Arbitration
Evaluating		Fast Track Arbitration
Investment		Paper only Arbitration
Best Value		Adjudication
		Expert Determination
		Dispute Review Boards (DRB)

Completing the quality management circle post settlement.

The crucial element here is to learn lessons, where applicable, from the episodes that have led to the dispute. Dispute resolution processes in their different ways provide indicators as to what went wrong and thus provide the key to avoiding repetition in the future.

The compromise that arises out of negotiated settlement is largely based on a risk assessment of potential exposure arising out of self acknowledgment of the shortcomings of the organisations actions. The settlement limits the damage but remedial action can recoup that cost by preventing repetition. Acknowledgement of shortcomings is the first step towards providing a future fix. That opportunity should not be squandered.

Similarly, where a third party expert determination process is involved, the cost of the process should not only be viewed as an inevitable litigation cost, but also as an investment in the procuring of an independent expert opinion as to the efficacy of a businesses practices and procedures.

It is worthwhile taking a pause for thought at this stage to contrast the decision making processes involved with in house problem solving mechanisms.

Without wishing to take anything away from the value of operating a client complaints service, nonetheless it is rare for organisations to track complaints beyond the event. The complaints desk operative is normally empowered to either pacify the complainant through apologies & explanations (excuses) or alternatively or to offer a replacement product or provide a refund. The pacification technique is cost effective in the short term. Robust individuals frequently undertake such posts, reinforced with in-depth training in the rules, regulations and codes of practice of the organisation. It often requires a very determined complainant to convince the operative that the computer actually was wrong, that the customer was given inaccurate advice or that staff were rude and inconsiderate. There is often an institutional pride and trust (frequently misplaced) in the infallibility of colleagues and institutional procedures. Particularly in the service sector, such individuals are skilled at presenting the organisations practices as effective and fair. They, more than any others, lack the capacity to recognise short comings in an organisations procedures, or to provide critical reports that might lead to future remedial action. The independent third party facilitator or adjudicator by contrast, owes no such allegiances and thus can provide an objective assessment of the situation.

Global Transferable Skills.

Cultural Imperialism or Good Management Practice ?

Simply because the West has pioneered Dispute Management to its own advantage does not mean that the same techniques will necessarily benefit commercial and government organisations outside the West. It is important to question whether or not these new management skills are culturally transferable. There is little doubt that certain elements of human behaviour are universal, so it is not unreasonable to assume that management techniques that address such behavioural patterns should likewise be universally applicable. However, to the extent that human behaviour is modelled and shaped by local culture, there is a need to evaluate and consider ways of adapting and remodelling management techniques to take cultural differences into account. In order to achieve this it is important to identify

a) Management techniques that apply to universal aspects of human behaviour.
b) Management techniques that are culturally-centric and non-transferable.
c) Management techniques that are culturally sensitive but which are nonetheless adaptable and culturally transferable with appropriate modifications.

Whilst conflict is a universal phenomenon it would be wrong to assume that the causes of conflict are equally universal. Even so, there are identifiable universal causes of conflict, just as there are identifiable universal base standards of socially acceptable behaviour. Furthermore, the ways in which individuals relate to and treat conflict vary, reflecting socio-cultural values and local social conditions and practices. Nonetheless, there are identifiable universal consequences that follow on from the breach of universal base standards of socially acceptable behaviour which are likely to produce very similar reactions from the adversely affected party.

The cultural fault-lines between Asian, Eastern and Western culture are self evident. Nonetheless, The Napoleonic Code has provided the model for much of the world, whilst the English Legal System has been widely adopted and assimilated. This has occurred despite the fact that both systems have their roots firmly planted in the western culture. Although in principle able to resolve conflicts between entities belonging to different cultures practice exposed shortcomings. Western legal systems have failed to deal with certain aspects of conflict, amongst them underlying issues, interests and the special needs of the parties involved. In particular judicial settlement of conflict (based on formal procedures and evidence), does not afford the parties with an opportunity to relate to the psychological and cultural elements involved in conflict. Added to this, the length of judicial procedures, high costs and the adversarial nature of the legal process have forced the West to consider alternatives methods of settling disputes outside the courts.

ADR differs from legal proceedings in that a neutral, professional party is involved in the process, assisting the parties to negotiate and resolve their dispute, while taking into account the particular needs and interests at the base of the dispute. All evidence and arguments deemed by the parties as relevant are considered. The parties themselves, as opposed to the judge, are the decision-makers. Research has based the advantages of ADR on the opportunity it offers to settle disputes to the mutual benefit and satisfaction of all parties, at low cost, while empowering them, maintaining or even improving relationships, and reinforcing communal unity. If it can be shown that ADR can cross communal-boundaries then, since ADR forms the bed-rock of the Dispute Management Revolution, it would be reasonable to assume that the concept should in practice be culturally transferable.

Can ADR be successfully applied to cross-cultural conflict ?

Professionals have defined cross-cultural conflicts as "*a dispute or series of disputes relating to an issue between at least two persons, where an element of the dispute relates to the ethnicity of the parties &/or the parties belong to ethno-cultural groups.*" Since ADR enables the parties to a dispute to consider all the underlying issues and to conduct settlement negotiations, the process would appear to provide an opportunity to deal with & discuss cultural factors at the base of disputes & to provide satisfactory responses and solutions.

However, professional literature points to problems arising from attempts to apply models of mediation representing a particular culture to different cultural and cross-cultural contexts. The result is usually a partial and unsatisfactory solution, a failure to achieve results. *"Once bitten, twice shy"* is a natural reaction to failure and this has led to the avoidance of mediation amongst certain entities and groups.

The large number of disputes based on problems of identity & cultural differences arise from the multicultural & heterogeneous characteristics within societies, as well as from the development of relations, dependence & links between societies & states. Multicultural societies must deal with the necessity to recognise the unique nature of each group & entity, & the need to approach disputes in such a way as to reach a satisfactory solution whilst maintaining the relationships between the groups, vital for preserving the social structure.

Are the philosophic presumptions at the core of ADR universal & how far do the values they represent & reflect the values of Western culture? Are the models put forward for ADR sufficiently flexible to respond to the needs of cultural & ethnic groups? The tendency in the past has been to view ADR in terms of a universal model. With time it has become clear that an efficient response to conflicts requires a deeper understanding of both the tools available within ADR & the cultural background of the parties involved.

Mediation is a process characterised by direct communication, frontal confrontation between parties, & the intervention of a neutral professional, who has no authority to decide. These principles represent the values of a modern & individualistic society. The question is whether or not they can fit within cross-cultural contexts & be applied to disputes arising out of different values & norms, where the parties have different perceptions of the causes & effects of the issues which have brought them into conflict.

Conclusions

1) Dispute Management Practices and Procedures can be used in respect of disputes of a universal nature and in appropriate circumstances are readily transferable over cultural boundaries.
2) In respect of domestic, regionalised disputes, Dispute Management Practices and Procedures may need to be adapted to reflect local cultural differences and domestic legal structures.
3) Considerable care needs to be exercised in applying such techniques to cross-cultural disputes.

Inculcating the dispute resolution culture in the workplace.

A valuable starting point to the adoption of a dispute resolution culture is the provision of open and apparent complaints procedures, disciplinary procedures and independent workplace mediated dispute resolution processes.

In as much as mediation is a process that is sympathetic to the maintenance of long term relationships, it provides the ideal mechanism for settling employment disputes, building confidence in workplace relationships and the self confidence of employees.

The employee imbued with self respect is better placed to respect customers, to see their point of view and thus to adopt policies and practices that protect the long term trading interests of the employer. A contented and self satisfied workforce is more likely to be a committed, caring and sharing workforce.

Postscript

It is virtually impossible to overstate the benefits that an open, effective banking system offers to the wellbeing of society in general. It provides the key to commodity exchange and the creation of wealth. Central to this is consumer confidence, be it of the individual or the commercial enterprise, particularly small and medium enterprises, for whom cash flow is the key to fluidity and ongoing commercial viability. Small businesses in their turn are the lifeblood of the community, providing all the essential day to day services upon which society relies. The responsibility placed upon the banking community as the cornerstone of the economic and social society is enormous. Some of the ideas presented above may go some small way to help fulfil that obligation.

